REMARKS/ARGUMENTS

Claims 74-84 remain in this application.

1. Claim Rejections Under 35 USC §102

Claims 74-80 are rejected under 35 USC 102(e) as being anticipated by Merkel '198 (U.S. Patent 6,864,198 B2).

Respectfully, the 35 USC 102(e) rejection is improper. Applicant's attorney respectfully points out to Examiner that in the case of commonly-assigned inventions, as is the case here, and where a prior US patent and the pending application are directed to the same invention or obvious variants, that the proper rejection under the MPEP is a double patent rejection. Examiner is directed to MPEP 706(.02(b) and the section related to overcoming a 102(e) rejection, specifically section (D) (Outlined below in Grey). In that section, it states:

> A rejection based on **35 U.S.C. 102(e)** can be overcome by:
>
> (A) Persuasively arguing that the claims are patentable distinguishable from the prior art;
>
> (B) Amending the claims to patentably distinguish over the prior art;
>
> (C) Filing an affidavit or declaration under **37 CFR 1.132** showing that the reference invention is not by "another." See **MPEP § 715.01(a)**, **§ 715.01(c)**, and **§ 716.10**;
>
> (D) Filing an affidavit or declaration under **37 CFR 1.131** showing prior invention, if the reference is not a U.S. patent or a U.S. patent application publication claiming the same patentable invention as defined in **37 CFR *>41.203(a)<**. See **MPEP § 715** for more information on **37 CFR 1.131** affidavits. When the claims of the reference U.S. patent or U.S. patent application publication and the application are directed to the same invention or are obvious variants, an affidavit or declaration under 37 CFR 1.131 is not an acceptable method of overcoming the rejection. Under these circumstances, the examiner must determine whether a double patenting rejection or interference is appropriate. If there is a common assignee or inventor between the application and patent, a double patenting rejection must be made. See MPEP § 804. If there is no common assignee or inventor and the rejection under **35 U.S.C. 102(e)** is the only possible rejection, the examiner must determine whether an interference should be declared. See **MPEP Chapter 2300** for more information regarding interferences;

Accordingly, Applicant's attorney believe that the 102(e) rejection is improper and, therefore, should be withdrawn and a new double patenting rejection issued.

2. Allowable Subject Matter

Applicant's thank the Examiner for the indication of allowable subject matter. Claims 81-84 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant's have rewritten claims 81-84 as independent claims. Accordingly, it is believed that claims 81-84, are allowable.

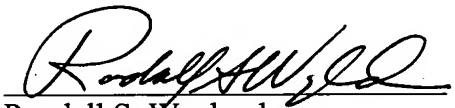
3. Conclusion

Based upon the above amendments, remarks, and papers of records, Applicants believe the pending claims of the above-captioned application are in allowable form and patentable over the prior art of record. Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Applicants believe that no extension of time is necessary to make this Reply timely. Should Applicants be in error, Applicants respectfully request that the Office grant such time extension pursuant to 37 C.F.R. § 1.136(a) as necessary to make this Reply timely, and hereby authorizes the Office to charge any necessary fee or surcharge with respect to said time extension to the deposit account of the undersigned firm of attorneys, Deposit Account 03-3325.

Please direct any questions or comments to Randall S. Wayland at 607-974-0463.

Respectfully submitted,



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